

177.035 Cost of relocation of publicly and privately owned utility equipment and appliances to be borne by department -- Conditions.

- (1) If the department determines that it is necessary for any fireplugs, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances, belonging to any municipality or a municipally owned utility, or any water district established pursuant to KRS Chapter 74, any water association established pursuant to KRS Chapter 273, any local school district, or any sanitation district established pursuant to KRS Chapter 220, to be removed or relocated on, along, over, or under a highway, in order to construct, reconstruct, relocate, or improve any highway, the municipality, municipally owned utility, water district, local school district, or the sanitation district shall relocate or remove them in accordance with the order of the department. The costs and expenses of relocation or removal required by this section, including the costs of installing facilities in a new location, and the cost of any lands, or any rights or interest in lands, and any other rights, acquired to accomplish the relocation or removal, shall be ascertained and paid by the department as a part of the cost of improving or constructing highways.
- (2) The term "utility" as used in subsections (3) to (5) of this section shall mean any utility not referenced in subsection (1) of this section, and the term shall mean any utility as defined in KRS 278.010.
- (3) If a utility has facilities located within the public right-of-way pursuant to KRS 416.140, the department may reimburse the utility the cost to relocate the utility's facilities to a location either within or without the public right-of-way if the relocation is required due to a highway construction project, subject to the following conditions:
 - (a) The utility shall be required to submit to the department for the department's approval a plan for relocating the utility's facilities. The plan shall include:
 1. A proposal for the relocation, including plans and a cost estimate developed in accordance with department guidelines; and
 2. A reasonable schedule of calendar days for completing the relocation that has been agreed to by the department. If, due to circumstances beyond the utility's control, the utility or the department cannot meet the specified completion date included in the plan, the department may grant an extension to the utility for a time period agreed upon by both parties; and
 - (b) The utility shall be required to have either:
 1. Entered into a written agreement with the department to include the relocation of the facilities as part of the department's construction contract. The utility may, with the approval of the department, perform a portion of the relocation work under this subparagraph with contractors or employees of the utility; or
 2. Entered into a written agreement with the department for the utility to remove all of its facilities that conflict with the highway construction project, as determined by the department, prior to letting the

construction contract. The utility may perform a portion or all of the relocation work under this subparagraph with contractors or employees of the utility.

- (4) A utility that enters into an agreement with the department under subsection (3)(b) of this section shall be required to complete the relocation work in compliance with the schedule included in the plan required to be submitted under subsection (3)(a) of this section. The provisions of this subsection shall not apply if the department fails to undertake the highway construction project within the time period specified in the agreement, and in this instance, the department shall be required to reimburse the utility any allowable cost the utility has incurred to relocate its facilities in compliance with the plan approved by the department.
- (5) The department shall reimburse a utility as authorized in subsection (3) of this section if the department is satisfied that the utility's facilities have been relocated in conformance with the plan approved by the department. The utility shall have twelve (12) months from the completion date of the relocation, according to the schedule of calendar days, to submit a reimbursement request for relocation costs to the department.
- (6) The provisions of this section shall not amend or affect in any way the provisions of KRS 179.265.

Effective: July 13, 2004

History: Amended 2004 Ky. Acts ch. 154, sec. 1, effective July 13, 2004. -- Amended 1994 Ky. Acts ch. 112, sec. 1, effective March 29, 1994; and repealed and reenacted by ch. 279, sec. 2, effective July 15, 1994. -- Amended 1990 Ky. Acts ch. 281, sec. 1, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 207, sec. 1, effective July 15, 1988. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(1). -- Created 1972 Ky. Acts ch. 361, sec. 1.

Legislative Research Commission Note.(9/10/90). Section 2 of the enrolled version of House Bill 301 of the 1990 Regular Session, 1990 Ky. Acts ch. 191, purported to amend KRS 177.035, but the inclusion of that section of the bill was the result of an error in enrolling a Senate amendment which was not accepted by the House and from which the Senate subsequently receded. Pursuant to KRS 446.017, Section 2 of the enrolled version of House Bill 301 is void and has been severed from that bill. The above statutory text is a recodification of KRS 177.035, as amended by the 1990 Regular Session, without the amendment contained in Section 2 of House Bill 301. The original 1990 codification of KRS 177.035 and its accompanying note are superseded and without effect.